

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NATIONAL STEEL CAR LIMITED, a
Canadian corporation,

Plaintiff,

vs.

THE GREENBRIER COMPANIES, INC.,

Defendant.

Case No. 6:19-cv-00721

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff National Steel Car Limited (“NSC”) brings this action against The Greenbrier Companies, Inc. (“Greenbrier”) to stop Greenbrier’s infringement of NSC patents which protect NSC’s proprietary railroad cars, and hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action arising under the laws of the United States, 35 U.S.C. §1, *et seq.*, for patent infringement. NSC seeks damages and injunctive relief as provided in 35 U.S.C. §§ 281, 283-85.

THE PARTIES

2. NSC is a corporation organized and existing under the laws of Canada, having its principal place of business at 600 Kenilworth Avenue North, Hamilton, Ontario, Canada L8N 3J4. NSC is a leading manufacturer of innovative products for the railroad industry, including freight cars that are best-in-class in North America.

3. Upon information and belief, Greenbrier is a corporation organized and existing under the laws of the State of Oregon, having its headquarters and principal place of business at One Centerpointe Drive, Suite 200, Lake Oswego, Oregon 97035. Greenbrier has a regular and established place of business in this judicial district at 497 South Tayman St., San Antonio, Texas 78226.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over NSC's claims of patent infringement pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331 and 1338(a), and the patent laws of the United States, 35 U.S.C. § 271 *et seq.*

5. This Court has personal jurisdiction over Greenbrier because Greenbrier has committed acts of patent infringement in this judicial district—for example, by importing infringing railroad gondola cars into the United States using railways that reside in and/or pass through this judicial district and/or using infringing railroad gondola cars on railways in this judicial district—has systematic and continuous contacts in this judicial district, regularly transacts business within this judicial district, and regularly avails itself of the benefits of this judicial district. This Court further has personal jurisdiction over Greenbrier generally because Greenbrier maintains a principal place of business in this District. Therefore, Greenbrier has established minimum contacts within the forum such that the exercise of jurisdiction over Greenbrier would not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

THE PATENTS-IN-SUIT

7. Since its founding in 1912, NSC has maintained a strong commitment to engineering and manufacturing freight cars that are unmatched in quality, strength, and design. NSC has devoted significant resources to innovation, which earned NSC a reputation as North America's preeminent railroad freight car manufacturer and a market leader in the railroad industry today.

8. To protect its intellectual property, NSC applied for and obtained patents directed to a railroad gondola car as set forth in, for example, U.S. Patent Nos. 7,434,519, and 7,878,125.

9. United States Patent No. 7,434,519 ("the '519 patent"), entitled "RAIL ROAD FREIGHT CAR," was duly and legally issued by the United States Patent and Trademark Office on October 14, 2008. A true and correct copy of the '519 patent is attached to this complaint as Exhibit A. The '519 patent is assigned to NSC, which owns all right, title, and interest in and to the '519 patent necessary to bring this suit for infringement of the '519 patent.

10. United States Patent No. 7,878,125 ("the '125 patent"), entitled "RAILROAD FREIGHT CAR," was duly and legally issued by the United States Patent and Trademark Office on February 1, 2011. A true and correct copy of the '125 patent is attached to this complaint as Exhibit B. The '125 patent is assigned to NSC, which owns all right, title, and interest in and to the '125 patent necessary to bring this suit for infringement of the '125 patent.

GREENBRIER'S PATENT INFRINGEMENT

11. Greenbrier has manufactured, used, offered for sale, sold and/or imported into the United States railroad gondola cars covered by one or more claims of the Patents-In-Suit, including but not limited to gondola cars stenciled with AAR reporting marks CDEX 19005 and CDEX 19432:



12. Upon information and belief, Greenbrier has manufactured, used, offered for sale, sold and/or imported into the United States a series of more than 400 railroad gondola cars (“the CDEX Series” cars) that are the same as, or substantially the same as, the CDEX 19005 and CDEX 19432 cars.

13. Upon information and belief, Greenbrier continues (or at least has plans to continue) to manufacture, use, offer for sale, sell and/or import into the United States infringing

cars, including but not limited to additional cars that are the same as, or substantially the same as, the CDEX 19005 and CDEX 19432 cars.

COUNT I
Infringement of U.S. Patent No. 7,434,519

14. NSC incorporates by reference the allegations in paragraphs 1 through 13, as if fully set forth herein.

15. Greenbrier has infringed, for example, one or more of claims 1, 3, 4, 13, 14, and 22-25 of the '519 Patent literally or under the doctrine of equivalents in violation of 35 U.S.C. § 271(a) by manufacturing, using, offering to sell, selling, and/or importing infringing gondola rail cars including the CDEX 19005, CDEX 19432, and CDEX Series cars (collectively, the “Infringing Cars”). Exhibit C, attached hereto, is a claim chart showing how the design and structure of the Infringing Cars meet every limitation of, and therefore infringe, one or more of claims 1, 3, 4, 13, 14, 22-25 of the '519 Patent.

16. Greenbrier has infringed one or more claims of the '519 patent in violation of 35 U.S.C. § 271(b) by actively inducing others to use infringing products including the Infringing Cars. For example, with knowledge of the '519 Patent, Greenbrier has offered and delivered the Infringing Cars to customers, including, for example, Tunnel Hill Partners, with the intent that Tunnel Hill Partners directly infringe the '519 patent by using the Infringing Cars without NSC's authorization.

17. NSC has suffered and continues to suffer damages as a result of Greenbrier's infringement of the '519 patent in an amount to be determined at trial.

18. Greenbrier's infringement of the '519 patent has damaged and will continue to damage NSC, causing irreparable harm for which there is no adequate remedy at law, unless and until Greenbrier is enjoined by this Court.

COUNT II
Infringement of U.S. Patent No. 7,878,125

19. NSC incorporates by reference the allegations in paragraphs 1 through 13, as if fully set forth herein.

20. Greenbrier has infringed, for example, one or more of claims 1, 15, 16, 18, and 19 of the '125 Patent literally or under the doctrine of equivalents in violation of 35 U.S.C. § 271(a) by manufacturing, using, offering to sell, selling, and/or importing the Infringing Cars. Exhibit D, attached hereto, is a claim chart showing how the design and structure of the Infringing Cars meet every limitation of, and therefore infringe, one or more of claims 1, 15, 16, 18, and 19 of the '125 Patent.

21. Greenbrier has infringed one or more claims of the '125 patent in violation of 35 U.S.C. § 271(b) by actively inducing others to use the Infringing Cars. For example, with knowledge of the '125 Patent, Greenbrier has offered and delivered the Infringing Cars to customers, including, for example, Tunnel Hill Partners, with the intent that Tunnel Hill Partners directly infringe the '125 patent by using the Infringing Cars without NSC's authorization.

22. NSC has suffered and continues to suffer damages as a result of Greenbrier's infringement of the '125 patent in an amount to be determined at trial.

23. Greenbrier's infringement of the '125 patent has damaged and will continue to damage NSC, causing irreparable harm for which there is no adequate remedy at law, unless and until Greenbrier is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, NSC prays for the following judgments and relief against Greenbrier:

1. A judgment that Greenbrier has infringed and is infringing the Patents-In-Suit;

2. A permanent injunction against Greenbrier and its affiliates, subsidiaries, assigns, employees, agents, or anyone acting in privity or concert with Greenbrier, from infringing the Patents-in-Suit;

3. An award of all damages adequate to compensate NSC for Greenbrier's patent infringement, such damages to be determined by a jury, and if necessary an accounting to adequately compensate NSC for the infringement;

4. An award of pre-judgment and post-judgment interest at the maximum rate allowed by law;

5. An order finding that this is an exceptional case and awarding NSC its costs, expenses, disbursements, and reasonable attorneys' fees related to Greenbrier's patent infringement under 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and

6. Such other further relief, in law or equity, as this Court deems just and proper.

DEMAND FOR JURY TRIAL

NSC hereby demands a jury trial on any and all issues appropriately triable before a jury.

Dated: December 23, 2019

Respectfully submitted,

By: /s/ Wayne B. Mason

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